IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15283 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BIPIN L. THAKKAR

Versus

CHAIRMAN

Appearance:

1. Special Civil Application No. 15283 of 2003

MR NALIN K THAKKER for Petitioner No. 1-2

MR RM CHHAYA for Respondent No. 1

MR SN SHELAT, ADVOCATE GENERAL, with Ms MAITHILI MEHTA, AGP, for Respondent No. 2&3

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 27/07/2004

ORAL JUDGEMENT

1. The facts giving rise to the present petition, in a nutshell, are as under:

2.1 The petitioners are close relatives and they were owners of Survey Nos. 227/1 and 227/2 situated at Bhuj, and in pursuance of Bhuj Town Planning Scheme No. 1, the above referred city survey nos. were renumbered as Original Plots Nos. 231 and 232, respectively, and in lieu of the said original plots, the petitioners were to be allotted Final Plot No. 517.

2.2 When the petitioners came to know that they were to be allotted Final Plot No. 517, which was at a distant place, they had made representations to respondent No. 1. Respondent no. 1 had carefully considered the representations made by the petitioners, and as there was substance in the representation, it was ultimately decided to allot Final Plot No. 460 to the petitioners instead of Final plot No. 517. It is pertinent to note that one of the grievances of the petitioners was that Final Plot No. 517 was at a very distant place from their original plots. The authorities, therefore, decided to allot Final Plot No. 460, which is hardly 100 meters away from the original plots of the petitioners.

3. In spite of the aforestated changes made, the petitioners have approached this Court for redressal of their following grievances:

3.1 It has been submitted on behalf of the petitioners by learned advocate Shri Thakkar that it is absolutely not necessary to have a 9 M. wide road near Survey Nos. 227/1 and 227/2, the place where the petitioners are having their original plots. It has been submitted that looking to the traffic and density of population in the said locality, the respondent authorities could have decided to have a road with 7.5 M width instead of 9 M. as planned.

3.2 Thereafter it has been submitted that even if the respondent authorities wanted to have a road with 9 M width, they could have constructed the road in such a manner that a portion of the petitioners' land and some land from the opposite side of the road could have been used for the purpose of construction of the road. It is the case of the petitioners that on the other side of the road there are buildings classified under G-4 category, which are in very bad shape and, therefore, practically no harm would be caused to the owners of those buildings,

if their land is used for construction of the road.

3.3 Thereafter, it has been submitted on behalf of the petitioners that the compensation, which is to be given to them, has not been properly determined. The petitioners have not been informed of the basis on which the amount of compensation is going to be awarded to them.

3.4 It has been further submitted that though the petitioners were owners of two different survey nos and two different original plots, they have been given one common final plot, being F.P. No. 460. According to the petitioners, they ought to have been given separate final plots.

3.5 Thereafter it has been submitted that the building belonging to the petitioners is in a very good condition. The building could withstand the shock of the earthquake, which had occurred on 26th January, 2001. With minor expenditure, the said building has been repaired and, therefore, it would not be proper to direct the petitioners to demolish the buildings so as to have a wider road.

3.6 It has been also submitted that some land has been reserved for public purpose in the vicinity. According to the learned advocate, it is not at all necessary to have land reserved for any public purpose in the said area. It is the case of the petitioners that if land is not reserved, the land, which is abutting the petitioners' original plots, could have been allotted to the petitioners and in that case the petitioners would not have been put to difficulties. It has been, therefore, submitted that no land should be reserved for any public purpose in the said area.

4. In pursuance of notice issued by this court, learned advocate Shri R.M. Chhaya has appeared for respondent no. 1 and learned Advocate General Shri S.N. Shelat and learned AGP Ms. Maithili Mehta, have appeared for respondents Nos. 2 and 3.

5. Affidavits have been filed on behalf of the respondents. It has been submitted on behalf of the respondents that, in fact, there is no substance in the petition and, therefore, it deserves dismissal. It has been further submitted that it is for the authorities to decide whether a road having width of 9 M. or 7.5 M. is required to be laid near the place, where the petitioners were having their original plots. According to the respondents, in near future, the said area is likely to

become busy and, therefore, it is necessary to have a wider road.

6. It has been also submitted that looking to the alignment of the road planned in the scheme, it is not possible now to make any change in the alignment. According to them, it is not possible to shift the road on the eastern side so as to help the petitioners.

7. So far as quantification of the amount of compensation is concerned, it has been submitted that if the petitioners are aggrieved by the quantum of compensation to be given to them, they can very well approach the concerned authority appointed under the Gujarat Town Planning and Urban Development Act, 1976 and, therefore, the grievance with regard to quantum of compensation cannot be made before this court.

8. With regard to the averment about the quality of the building possessed by the petitioners, without admitting the correctness about the strength and quality of the building, it has been submitted on behalf of the respondent authorities that, when the road is to be widened, it becomes irrelevant whether the buildings are in good shape or otherwise because, for the purpose of widening the road, the land on which the petitioners have constructed their buildings will be required. It has been therefore submitted that the said averment is hardly relevant.

9. The petitioners' submission with regard to not keeping any land reserved for public purposes is also not tenable because, it has been submitted on behalf of the respondents that the respondent authorities have to decide whether at a particular place any land is required to be reserved for public purpose. This has to be a sole discretion of the planners.

10. I have heard the learned advocates and have also gone through the affidavits filed on behalf of the respondents.

11. With regard to the submission of the petitioners that it is not necessary to have a road with 9 M width, in my opinion, this is a subject, which has to be decided by the town planning authority and not by this court. In the matter of town planning, experts know as to whether road is required and also of how much width. The width of a road would depend upon several factors and before deciding the width of the road, the authority must have looked into all relevant factors. It has been submitted

on behalf of the respondents that the road in question, on its northern side, ultimately connects a 12 M. wide road leading from east to west. Thus, it would not be proper to reduce the width of the road at the place, where the petitioners are having their original plots. The alignment of the road at a particular place is decided after taking into account several factors as stated hereinabove and, therefore, it would not be proper for this court to direct the authorities to reduce width of the road, which is abutting the original plots belonging to the petitioners.

12. Similarly, alignment of the road is also a matter to be decided by the experts. According to the petitioners, the road should be shifted to the eastern side so as to see that their plots do not form part of the road to be laid. As width of the road is to be decided by the town planning authority, the alignment of the road is also to be determined by the same authority and this court would not like to interfere in the matter of requirement of the road or determination of alignment of the road by the authorities.

13. The grievance ventilated by the petitioners with regard to quantum of compensation can be very well decided before an appropriate authority appointed under the Act. If the petitioners are aggrieved by the amount of compensation, they can have recourse to the legal provisions under the Act and, therefore, the said submission is not well-founded.

14. The next submission of the petitioners is that their building is in good shape and, therefore, it should not be demolished and they should not be shifted to a different place. Upon considering the submissions made on behalf of the learned advocates appearing for both the sides, it appears that it is not possible to change the alignment or the width of the road as stated hereinabove. If the alignment and width of the road are not to be changed, the petitioners cannot be permitted to have their building at a place, where the road is to be constructed. In the matter of town planning, very often a citizen has to suffer by shifting to another place and at times the superstructure put up by him may also have to be demolished for the purpose of laying or widening roads. Public interest can never be subordinate to the interest of an individual and therefore the petitioners cannot make grievance that their building will have to be demolished, especially in view of the fact that the petitioners are to be compensated when their building is demolished.

15. Another submission made by the petitioners is with regard to not reserving any land for public purpose in the vicinity so that they can be allotted the final plot at the place, where the land has been reserved for public purpose. Once again, it is for the respondent authorities to decide for what public purpose which land should be reserved. Simply because some land has been reserved for a cultural center near the original plots of the petitioners, they cannot claim a right to get the final plot at the place where the cultural center is to be constructed. While preparing a scheme, the authorities normally reserve some land for different purposes as required under the provisions of sec. 40(jj) of the Act. If the authorities have reserved land for different purposes enumerated in sec. 40, it cannot be said that the said action is improper or unjust.

16. It may however be noted here that the petitioners were having two separate survey numbers. In view of the said fact, as per normal practice, both the petitioners ought to have been given different final plots, but in this case they have been given a common plot, being Final Plot No. 460. There appears to be some substance in the grievance that the petitioners should have been given separate final plots.

17. If the petitioners are interested in having separate final plots, they shall prepare a sketch/map showing how F.P. No. 460 should be divided among them and such a sketch/map shall be submitted to respondent No. 1 within five weeks from today with a request to allot F.P. No. 460 in two sub plots to the petitioners as per the sketch/map prepared by them. Upon receiving such a sketch/map, respondent No. 1 shall study the same, and if possible allot two sub plots of F.P. No. 460 to the concerned petitioner by making necessary demarcation in F.P. No. 460 and the petitioners shall be informed accordingly. All changes, which might have to be effected in the record, shall also be effected.

18. Lastly, it has been submitted by the learned advocate appearing for the petitioners that the petitioners are using the original plots for residential purpose and it would be extremely difficult for them to find another house for their residence immediately. It has been, therefore, requested that some time be granted to them for vacating the building occupied by them. Though learned advocate Shri Chhaya appearing for respondent No. 1 has objected to grant of further time, in the interest of justice it is directed that the

petitioners shall not be evicted from the land in question for a period of three weeks from today.

19. Subject to the above directions, the petition stands disposed of as rejected. Notice is discharged. Ad-interim relief stands vacated.

(A.R. Dave, J.)

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